

(3) (12)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Cr.A. No. 641 OF 2001

APPELLANT

Vishwanath Ghasi
Aged about 35 years
S/o Aghnu
R/o Village Surbena
Police Station Kusmi
District Surguja
CHHATTISGARH

VERSUS

The State of Chhattisgarh

RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL
PROCEDURE 1973

Filed on 2-3-7-2001
by Shri. Seelhi Baispa
Advocate
R. to AR

मामला क्रमांक Cr.A. 641/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	<u>DIVISION BENCH :-</u> <u>HON'BLE MR. L.C. BHADOO, Ag. C.J. &</u> <u>HON'BLE MR. SUNIL KUMAR SINHA, J.</u> <u>05.02.2007</u> Ku. Nirupama Bajpai, counsel for the appellant. Shri M.P.S. Bhatia, Panel Lawyer for the State. Arguments heard. Oral judgment dictated on Board as follows: <u>Per L.C.Bhadoo, Ag.C.J.,</u> (1) This appeal is directed against the judgment of conviction and order of sentence dated 10.10.1998, passed by the First Addl. Sessions Judge, Ambikapur, in Sessions Trial No.272/1993 whereby the learned Addl. Sessions Judge, Ambikapur, Distt. Sarguja, after holding the accused appellant guilty for the commission of the offence under sections 302 and 397 IPC, sentenced him to undergo imprisonment for life. (2) The case of the prosecution in brief is that P.W.1 Jhair Nageshia gave <i>Merg</i> intimation (Ex.P1/A) in the Police Station of Kusmi to the effect that his nephew Satnu alongwith Deonarayan, went to village Kamalapur to sell the Bamboo but he did not return. The next day morning, Deonarayan came and informed	

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मामला क्रमांक Cr.A. 641/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	— 2 —	him that after committing the murder, the body of Satnu has been thrown in <i>Dand</i>, on which he along with Karma, Dharma, Budhu Aghnu, Handu, went to the <i>Dand</i>. They saw that the body of Satnu was lying there, blood was coming out of his mouth, there were injuries on the chest. One musical instrument (<i>Madar</i>), one Coconut and a container (<i>Jerkin</i>) were lying there. On receipt of this <i>merg</i> intimation, the Station House Officer of Police Station left for the scene of occurrence. He seized one blood stained <i>Chhadar</i>, blood stained soil and plain soil from the place of occurrence under Ex.P-2. Under Ex.P-1, he seized one bag, one musical instrument (<i>Madar</i>) made of the leather, one container (<i>Jerkin</i>) and one pair of cloth shoes from the place of occurrence. During investigation, in police custody, the accused gave the memorandum (Ex.P-4) and in pursuance of the memorandum given by the accused, an Axe was recovered at his instance under Ex.P-5. One Lungi and one Banian were seized under Ex.P-6. Six currency notes of each Rs.10/- denomination, total amounting to Rs.60/-, were seized under Ex.P-7. The body of Satnu was sent for postmortem examination to Primary Health Center, where Dr.T.Sai (P.W.5)

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. 19 64/101 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	conducted the postmortem and prepared the report vide Ex.P-10. He opined that the cause of death was asphyxia due to strangulation. The mode of death was homicidal. The investigating officer gave <i>Dehati Nalishi</i> Ex.P-11 based on that the First Information Report Ex.12 was registered for commission of the offence punishable under section 302 read with section 34 of IPC. The site plan Ex.P-13 was prepared. After giving notice to the Panchas, the inquest on the body of Satnu Ex.P.15 was prepared. After completion of the investigation, the charge sheet was filed in the Court of Judicial Magistrate, First Class, Ambikapur, who in turn committed the case to the Court of Sessions Judge, Ambikapur from where the learned first Addl. Sessions Judge, received the case on transfer. (3) The prosecution in order to establish the charge against the accused persons, examined six witnesses. The Statement of accused Vishwanath and co-accused Jowa Mohli were recorded u/s 313 Cr.P.C. in which they denied the prosecution evidence appearing against them. The learned Addl. Sessions Judge, after hearing the respective counsel for the parties, convicted the	

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मामला क्रमांक G.A....64101 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	accused Vishwanath, however, acquitted the co-accused Jowa Mohli. (4) We have heard Miss. Nirupama Bajpai, Advocate, appearing on behalf of the appellant and Mr.M.P.S. Bhatia, Panel Lawyer, appearing on behalf of the State. (5) At the out set, Miss. Nirupama Bajpai argues that the conviction is based on circumstantial evidence. There is no direct or ocular evidence regarding involvement of accused appellant in crime in question i.e. the deceased was last seen alive in the company of the accused appellant, by P.W.2 namely Deonarayan. She further argues that in the cross examination of Deonarayan, he stated that he alongwith Satnu after selling of Bamboo went to the house of accused Vishwanath where three of them consumed liquor, thereafter, they went to the house of Bigwa. By that time, he was under the influence of liquor and was feeling drowsy. At that time, the accused Vishwanath and deceased Satnu were talking for going to village Khajuri for fetching the Musical instrument (Madar). He in the meantime went in sleep. Therefore, she contends that there is no legal evidence on record to establish	

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	that the accused and the deceased left together and the deceased was last seen alive in the company of the accused, just before his death. As such the prosecution has not been able to establish the involvement of the accused in the crime in question. (6) On the other hand, Mr.Bhatia, Panel Lawyer, for the State supported the judgment of the trial Court. (7) In order to appreciate the argument of Miss Bajpai, we have perused the evidence of Deonarayan (P.W.2). In examination-in-chief, he has stated that he along-with Satnu went to the village Kamalpur for selling Bamboos, after selling their Bamboos, they went to village Surbena where they consumed liquor alongwith accused Vishwanath in the house of Vishwanath. The deceased Satnu asked for the Musical instrument (<i>Madar</i>) from Vishwanath but there was no such instrument with the accused, on which the accused Vishwanath said to Satnu that he will search for the same in his village. Then all of them went to the house of one Bigwa, where Deonarayan went in sleep under the influence of consumption of liquor. However, he heard that accused Vishwanath and Satnu were talking to go to village Khajuri. He	

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मामला क्रमांक C.A.64101 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	does not know where they had gone. Therefore, if we stare at the evidence of Deonarayan (P.W.2), there is nothing in his evidence that in fact he saw the accused and the deceased leaving the house of the Bigwa together for going to village Khajuri. Apart from the above evidence of this witness, there is nothing on record to connect the accused with the crime in question. (8) As per the settled law, in order to connect the accused in crime based on the last seen theory, there must be proximity between the death of the deceased and when he was last seen alive with the accused. In the matter of <u>Bodhraj Alias Bodha and others -vs- State of Jammu and Kashmir reported in (2002) 8 SCC 45</u>, the Apex Court held that "the theory of last seen comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together".	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 641/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	(9) In the matter of <u>Subhash Chand -Vs- State of Rajasthan</u>, reported in (2002) 1 SCC 702, the Apex Court held that "to constitute evidence of last seen together, the evidence must definitely permit an inference being drawn that the victim and the accused were seen together at a point of time in close proximity with the time and the date of commission of crime. (10) Again, in the matter of <u>State of Karnataka -Vs- M.V. Mahesh</u> reported in (2003) 3 SCC 353, the Apex Court held that merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that victim had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. (11) In the light of the above principle, if we examine the evidence available on record, there is nothing on record except the evidence of P.W.2 Deonarayan to the effect that this witness heard the conversation of the accused and the deceased that they will go to village Khajuri for bringing a musical instrument. In fact, this witness went in sleep on being intoxicated and he does not know	

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मामला क्रमांक Cr.A. 641/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	whether the accused Vishwanath and Satnu had left together or not. Apart from that, there is no evidence to indicate that in any way, the accused was having any grudge against the deceased to finish him. (12) Mr. Bhatia submits that currency notes were looted from the deceased, as per the evidence of P.W.3 Laxman Ram, this amount was seized from the co-accused Jowa Mohli under Ex.P-7 and not from the accused Vishwanath and from the accused Vishwanath, one currency note of Rs.50/- and another currency note Rs.10/- total amounting to Rs.60/- was seized under Ex.P-8. But there is nothing on record to show that those currency notes were of the deceased. As far as the recovery of the Axe is concerned, that is also no help to the prosecution for the reason that there is no evidence that the Axe was used for commission of the offence. In fact, as per the medical evidence, Satnu died on account of Asphyxia due to strangulation, therefore, there is nothing that on the basis of recovery of Axe which is a common article found in the village site, the accused be connected with the crime in question.	

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मामला क्रमांक Cr. A. 64.1/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	(13) In the result, the judgment of the trial Court convicting the accused for commission of the crime u/s 302 cannot be sustained as the same is not based on any legal and clinching evidence in order to establish that the accused was the only person, who committed the crime in question. (14) In the result, the appeal of the appellant succeeds. The same is allowed. He is acquitted under the charges of sections 302 and 397 IPC. He is said to be in detention since 1998. Therefore, he be released forthwith, if not required in any other case.	

Sd/-
Acting Chief JusticeSd/-
SUNIL KUMAR SINHA
Judge

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